A.P.R.

HIGH COURT OF JUDICATURE, CHHATTISGARH AT BILASPUR

Writ Petition No.2747 of 2003

PETITIONERS:

1. Jeevati Bai Widow of Sri Saynath Kanwar, aged about 45 years.
2. Shiv Nath S/o Shri Khekhe Alias Ameli, aged about 60 years.
3. Dhobi Sai S/o Sri Saynath , aged about 22 years.
4. Asha Ram S/o Sri Saynath, aged about 26 years.

All R/o Village- Popranga,
Police Station- Batoli,
Tahsil- Sitapur, District – Sarguja (C.G.)

-Versus-

RESPONDENTS:

1. Smt. Surmoti Wife of Sri Nanku Singh, aged about 42 years.
2. Nanku Ram S/o Sri Mansai, aged about 45 years.
   Both R/o Village- Popranga, Police Station- Batoli, Tahsil- Sitapur, District-Sarguja (C.G.).
3. State of C.G. Through Collector, Sarguja (C.G.).

POST FOR ORDER ON 10th September, 2003

Sd/-
L.C.BHADOO
Judge

9th September 2003

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Shri Manoj Paranjpe, Advocate for the petitioners.

Before: Hon'ble Shri L.C. Bhadoo, J.

O R D E R

(Passed on 10th September, 2003)

1. The petitioners have preferred this writ petition under Article 227 of the Constitution of India being aggrieved by the order passed by the 6th Additional District Judge, Ambikapur dated 26th July, 2003 in Misc. Civil Appeal No. 32/2002 arising out of the order dated 24th April 2002 passed by the Additional Civil Judge, Class-I, Ambikapur in Civil Suit No. 8-A/2001.

2. The brief facts leading to filing of this writ petition are that the petitioners filed a civil suit for declaration of the title and permanent injunction and the relief of declaration is sought to the effect that the sale deed executed on 28.2.1992 in favour of the respondents in respect of the land described in Schedule–B of the plaint be declared null and void and the petitioners be declared as owners of the disputed land. The said land in question is ancestral property of the

plaintiffs/petitioners being joint Hindu Family property; the same was acquired by Khekhe, the grand-father of petitioners 3 & 4. It has further been mentioned in the petition that the Joint Hindu Family property was not partitioned. As respondents 1 & 2 are interfering in the possession and the petitioners also came to know that respondents 1 & 2 got executed the sale deed in respect of the suit property by forging the signature of their father Saynath and got mutated their name in the revenue records without any intimation to the petitioners. They had also filed an application for temporary injunction under Order 39 Rule 1 and 2 for restraining the respondents from interfering with the possession of the petitioners.

3. The trial Court after hearing the parties granted injunction in favour of the petitioners. However, on appeal the appellate Court vide its impugned judgment set-aside the order passed by the trial Court and rejected the injunction application filed under Order 39 Rules 1 and 2 on the ground that undisputedly after execution of the sale deed by the predecessor of the petitioner namely Saynath the respondents are in possession therefore by way of the interim injunction they cannot be restrained as they are in possession i.e. the petitioners are not in possession of the suit property.

4. I have heard learned counsel for the petitioner.

5. The main argument of the learned counsel for the petitioner is that since the property in question is an ancestral property of a Joint Hindu Family, therefore, Late Shri Saynath was not entitled to sale the property because the said property was acquired by their grand-father Khekhe @ Ameli and on his death the agricultural property was inherited by his two sons namely Shivnath (petitioner No.2) and Saynath (husband of petitioner No.1 and father of petitioners 3 & 4) and this property was not partitioned therefore they are entitled for the injunction against the respondents not to interfere with the use and occupation of the petitioners.

6. As far as the arguments with regard to the legal position advanced by the learned counsel for the petitioner is concerned, there can be no two opinion about it and also the judgment cited by the learned counsel for the petitioner, but the present case is totally on different

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footings, therefore, the authorities cited by the learned counsel for the petitioners are of no help to the petitioners in the facts and circumstances of the case for the reasons that the land in question was transferred by the ancestor of the petitioners namely, Saynath by a registered sale deed on 28.2.1992 and after obtaining due consideration of sale and the suit has been filed to cancel that sale deed, therefore unless and until that sale deed is cancelled the right vests in respondents and also they are in possession of the property also. More over it has come on record that even Late Saynath was also not in possession of the property in question. As to meet the expenses of his family he left the village along with his family 10-11 years back to earn livelihood and he went to the place namely Dedholi Jarhadeeh Tehsil-Lundra and at the time of leaving he handed over the papers of the agricultural land to respondent No.2 (Nanku Ram). Saynath remained at Dedholi for 3–4 years and thereafter, died in the year 1993. Therefore, it is admitted that the petitioners or their ancestor was not in possession of the ancestral land and the ancestor of the petitioners transferred the land in question by a registered sale deed dated 28.2.1992. Therefore, by way of temporary injunction the respondents cannot be dispossessed from the land by allowing the petitioners to take possession of the land without following due process of law. The appellate Court has rightly placed reliance on Section 44 of the Transfer of Property Act which lays down that "where one or two or more co-owners of the immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred". A purchaser from the co-sharer cannot claim exclusive possession but can claim only that 'not to dispossess him without recourse of law'. Therefore, the respondents are already in possession since execution of the sale deed in their favour by Saynath and now they cannot be dispossessed from the possession which they are enjoying.

7. Therefore, in the given circumstances no prima-facie case is made out in favour of the petitioners to grant temporary injunction. Mover over, the balance of convenience is also in favour of the respondents because they are in possession that too under a registered sale deed and there is no question of causing any irreparable loss to the petitioners because as on date unless the sale deed is declared null and void by a decree of the Court. On the face of record the ancestor of the petitioner namely, Saynath sold the property to the respondents after taking Rs.7,000/- therefore no irreparable injury is going to be caused to the petitioners if the injunction is not granted in their favour.

8. More over this Court while exercising the powers under section 227 of the Constitution of India cannot exercise the powers as of an appellate Court. Under Article 227 of the Constitution of India supervisory jurisdiction vests in this Court and these powers can be exercised only when subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or the jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has resulted. The power of superintendence was not meant to circumvent statutory law. Further the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise".

9. In view of the above, this writ petition has no force and the impugned order in any way does not require interference by this Court under Article 227 of the Constitution of India. The petition deserves to be dismissed and the same is dismissed in limine at this admission stage itself.

Sd/-
L.C.BHADOO
Judge

Thakur